



## Cross-border surrogacy: Legal complexities and human rights concerns in global reproductive tourism

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### Abstract

Cross-border surrogacy, commonly known as global reproductive tourism, is an intricate legal and ethical phenomenon that has emerged over the last few decades. It includes the case where intended parents go to other jurisdictions abroad where surrogacy legislation is either less restrictive or more economical. Nonetheless, there are important legal uncertainties surrounding this practice in terms of parental rights, citizenship of the child, and enforceability of cross-border surrogacy agreements. Moreover, as there is no standard international regulation, surrogate mothers, who, in most cases, have low economic backgrounds, are exposed to the danger of being exploited and their human rights being violated. Custodial, consent, and compensation disputes also complicate the practice further, putting both host and home countries in moral and legal dilemmas. This research will review and discuss these complex issues and how necessary it is to have international collaboration and human rights approaches to cover ethical, transparent, and fair surrogacy practices in the new reality of global reproductive tourism.

*Keywords:* challenges, historical context, laws, opportunities, theoretical context

### Introduction



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Cross-border surrogacy is also referred to as international or global surrogacy, which is the practice where the intended parents visit a foreign country to hire a surrogate mother to have a child (Hibino, 2022). The occurrence of this practice has attracted major attention due to the increased trends of globalization, reproductive technology, and differences in legal regulations and medical expenses within nations (Armstrong, 2022). India, Ukraine, and Georgia are some of the countries that have historically been the destinations of the targeted parents of countries that have restricted or banned surrogacy (Luo et al., 2022).

On the one hand, cross-border surrogacy provides hope to infertile couples and individuals who want to have children (Marinelli et al., 2022). On the other hand, it provokes issues concerning legal, ethical, and human rights. The lack of a common international law system has resulted in complicated cases on the part of citizenship issues, parentage, and jurisdiction (Attawet, 2022). Kids that are born through transnational surrogacy deals are usually in legal limbo as certain states do not accept the legal status of the intended parents (Vertommen et al., 2022). In addition, the surrogate mothers, especially in the economically underprivileged areas, can face such problems as exploitation, absence of informed consent, and insufficient legal support (Agopianz et al., 2024).

Surrogacy has also been commercialized, making it even more difficult to distinguish between altruism and commodification of the human body (Whittaker et al., 2022). At this, cross-border surrogacy requires a thorough investigation in legal and human rights terms. The purpose of this paper is to examine the distinctions in the global legal framework of reproductive tourism, to bring out human rights issues impacting the surrogate as well as the children, and to suggest ways of ensuring (Paterlini, 2024). The ethical and globally harmonized regulatory provisions are put in place to safeguard the rights and dignity of all concerned parties (Burgio et al., 2022).

## **Research Justification**

The recent trend in cross-border surrogacy is a clear indication of the need to conduct an in-depth legal and ethical study because it has complicated repercussions on the law and human rights in the international context. Although surrogacy is getting more and more popular, global surrogacy has not been regulated properly on an international scale, with a number of countries having different laws and a lack of consistency in the protection of those involved. Such a legal gap frequently creates conflicts of parental rights, nationality, and legalization of surrogacy contracts in terms of children and surrogate mothers.

In addition, commercial surrogacy is also a subject of grave ethical and human rights issues, such as exploiting women of poor economic status who might be forced to be surrogacy mothers in the name of earning money. The absence of informed consent, insufficient healthcare, and a lack of legal redress further amplify these risks. Policymaking-wise, this study is warranted as it tries to fill the urgency of clarity, equity, and human-rights-based governance in the international surrogacy industry.

Through the investigation of the legal issues and ethical challenges of cross-border surrogacy, the study will serve a scholarly purpose in the discussion and provide policymakers



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with the information on the need to establish harmonized international regulations that will guarantee the protection of human dignity as well as balance the reproductive rights of both the intended parents and surrogate mothers.

## Research Objectives

1. To discuss the historical context of cross-border surrogacy.
2. To highlight the theoretical context of cross-border surrogacy.
3. To analyze the laws regarding cross-border surrogacy.
4. To identify the key challenges regarding cross-border surrogacy.
5. To explore the opportunities for cross-border surrogacy.
6. To propose effective prevention and intervention strategies.

## Research Methodology

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

1. **Relevance:** Researches that directly addressed the questions posed by this study are included.
2. **Quality:** Studies that meet a certain quality threshold (e.g., methodological rigour, bias risk) are included. Most of the research is from Scopus-indexed and Clarivate Analytics journals and reputed publishers.
3. **Recency:** Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.
4. **Language:** Only studies published in English are included.
5. **Data Completeness:** Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

## Literature Review

The discussion of transnational surrogacy has developed strongly in recent years, as there is a growing dependence on assisted reproductive technologies on a global scale and as related to the intricacies of reproductive tourism (Burgio et al., 2022). As out, globalization and economic disparity have made surrogacy a transnational business, where the intended parents based in developed countries and those in less developed countries find it cost-effective to get the reproductive services they desire (Paterlini, 2024). These papers emphasize that the major sources of differences in the global surrogacy economy are the differences in the legal systems



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and socioeconomic status, which tend to lead to new ethical and legal debates (Agopiantz et al., 2024). Law Legal studies, such as those that look at why there are no uniform international laws that regulate surrogacy arrangements (Whittaker et al., 2022).

They state that the conflicting laws in the country cause confusion in the law as to parental rights, child citizenship, and the validity of the surrogacy agreements (Vertommen et al., 2022). An example is that where countries such as the United Kingdom and Canada only acknowledge altruistic surrogacy, in other countries such as India and Ukraine, commercial surrogacy has been accepted with different levels of regulation (Attawet, 2022). This lack of consistency creates cross-border conflicts and places children conceived using surrogacy in the legal grey area. In the human rights view, reports about the ethical aspects of surrogacy are associated with the exploitation and the commodification of the human body of women (Marinelli et al., 2022). They underline the power imbalance between the rich intended parents and the poor surrogate mothers which is economically disadvantaged.

According to the feminist critics, commercial surrogacy usually reflects the inequalities of the global world and can violate the autonomy and dignity of women (Luo et al., 2022). Taken together, the literature reviewed highlights that cross-border surrogacy is not a simple medical or contractual agreement but rather a complicated nexus of law, ethics, economics, and human rights (Armstrong, 2022). The lack of unified international laws remains problematic to legal acceptance, moral responsibility, and total protection of all involved parties, which demands a global system to guarantee justice and equality in reproductive tourism (Hibino, 2022).

## **Historical Context of Cross-Border Surrogacy**

International surrogacy or cross-border surrogacy is a phenomenon that appeared in the early 21st century due to the development of assisted reproductive technology and the disparities in the legal systems of two countries (Luo et al., 2022). However, initially, surrogacy was only applied to a domestic process. Still, the high cost and demanding laws in most countries in the West prompted the intended parents to resort to surrogacy in foreign countries, especially developing countries (Hibino, 2022). India, Thailand, Nepal, and Ukraine became among the top destinations because medical services were cheap, there were highly qualified professionals, and legal systems were lenient (Armstrong, 2022).

India especially emerged as a hub of surrogacy in the world as it legalized commercial surrogacy in the year 2002. Since then, thousands of foreign couples have been flocking to India annually (Marinelli et al., 2022). But with this growth, ethical controversy and exploitation of economically vulnerable women also emerged. Poor working conditions, lack of informed consent, and the issue of custody were reported, and these raised serious concerns about poor human rights (Attawet, 2022). After some global cases, such as surrogate children left behind and unethical medical standards, it started restricting numerous countries (Vertommen et al., 2022).

In 2015, India prohibited commercial surrogacy by foreigners; Thailand and Nepal followed suit (Paterlini, 2024). Nevertheless, such changes do not eliminate the fact that cross-border surrogacy is still present in such nations as Ukraine and Georgia (Whittaker et al., 2022).



Showing that there is still a disproportion in the laws regulating reproduction all over the world and that the global regulations have yet to be aligned (Burgio et al., 2022).

## **Theoretical Context of Cross-Border Surrogacy**

The theoretical framework of cross-border surrogacy is based on the principles of feminist theory, the discourse of human rights, and globalization. In a feminist view, scholars have said that commercial surrogacy, in many cases, repeats gender and economic disparities in the world. Radical feminists see it as a way of exploiting and commodifying the bodies of women, as the underprivileged women in the developing world are exploited to satisfy the reproductive needs of rich foreigners.

Liberal feminists, on the contrary, stress independence and agency in women and say that surrogacy may be a form of empowerment in case it is held in appropriate and ethical conditions. Human rights perspective on cross-border surrogacy casts serious questions on the safety of the surrogate mothers, the legal entitlement of the intending parents, and the legal status of the babies born by such a procedure. The Convention on the Rights of the Child (CRC) and other international tools highlight the importance of the child in terms of nationality and family acknowledgement, some of the questions that are frequently at risk in transnational surrogacy. In the meantime, the globalization theory illustrates the growth of reproductive tourism due to the global economic interdependence and the unequal laws.

It points out the role of technological mobility and regulatory differences in establishing a transnational marketplace of reproductive services to contest the traditional concept of family, parenthood, and state sovereignty in the 21st century.

## **Laws Regarding Cross-Border Surrogacy**

**1. Permissive Legal Frameworks:** In this, the birth mother carries a pregnancy and delivers a child that is not hers. Other countries like the United Kingdom, Canada, and Australia only allow altruistic surrogacy where the surrogate mother is paid solely according to medical and pregnancy costs. This legislation would ensure that the process of commercialization of the female reproductive capabilities is avoided and ethical surrogacy processes are permitted. These are laws that are restrictive or prohibitive in nature.

**2. Deficiency in International Regulation:** There is a deficiency in International Regulation. Lack of an international law system has brought about the lack of a worldwide legal system on issues of citizenship of the surrogate-born children, parentage, and legal status of the children. The Hague Conference on the Law of International Sales is now in discussion of global options that will provide compatibility and protection to all parties in a cross-border surrogacy agreement.

**3. Liberal Legal Systems:** Surrogacy has been legalized and regulated in some countries to lure foreign intended parents. The few countries with commercial surrogacy include Ukraine, Georgia, and Russia, which are clear regarding the rights of intended parents and have simple birth registration practices. They have turned out to be the key international reproductive tourism centers. In this type of surrogacy, a woman bears a pregnancy and carries it to term before delivering a child that is not hers.



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**4. Restrictive or Prohibitive Laws:** Previously, India, Thailand, and Nepal were major surrogacy destinations, but they have since prohibited commercial surrogacy by foreign couples due to the claims of exploitation and human rights abuse. In the same manner, France, Germany, and Italy have banned surrogacy, as surrogacy is deemed unfit for the dignity of humanity and the state policy.

## **Challenges for Cross-Border Surrogacy**

**1. Absence of Control and Supervision:** In nations that have legalized surrogacy, laxity and lack of control may result in unethical medical standards and commercial exploitation.

**2. Exploitation and Ethical Issues:** Economic differences between the targeted parents and the surrogate mothers cause serious ethical concerns. Developing countries can be manipulated by financial reasons to enter into surrogacy deals; they receive poor medical care, unfavorable work conditions, and are not informed of this.

**3. Legal Ambiguities:** Absence of standardized international laws is one of the greatest issues of cross-border surrogacy. The regulation of the legality of surrogacy, parental rights, and the citizenship of the child is in conflict between different countries. It usually places the children in legal limbo, neither country acknowledging them in terms of legal status or parentage.

**4. Problems of Citizenship and Parentage:** Children born in foreign countries in a surrogacy arrangement are not automatically attributed nationality in their mother country in many countries may create complicated citizenship conflicts. The parenthood of children is usually a long court struggle to get them back, or the parenthood is adopted.

**5. Psychological and Social Consequences:** Surrogate mothers and children can have long-term emotional and identity problems. Lack of proper counseling, post-birth care, and social support also adds to the ethical aspects of global reproductive tourism.

## **Opportunities for Cross-Border Surrogacy**

**1. Economic Benefits:** With reference to developing countries, the cross-border surrogacy does affect the healthcare economy by offering employment in healthcare, medical, and other related sectors. Surrogate mothers in the well-protected frames of the ethical frames can also achieve financial empowerment and improved living conditions.

**2. Global Access to Parenthood:** The cross-border surrogacy provides the infertile couples, the single parents, and same sex couples in the countries that have repressive laws, with the biological parents. It shows individuals the power to overcome medical, social, and legal limitations that may exist in respective countries.

**3. International Cooperation:** The entire problems of international surrogacy have resulted in disputes with the international bodies, such as the Hague Conference on Private International Law, coming up with harmonized policies. It provides a chance to come up with international ethical practices that safeguard human rights.

**4. Interchange and Sensitization of Culture:** Cross-border surrogacy is a form of cultural comprehension and intercultural empathy that enables inclusion and adoration of the diversity of the family setup in the globalized world.



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**5. Medical advancement:** Reproductive tourism has encouraged the development and collaboration in the field of assisted reproductive technology (ART). In other countries like Ukraine, Georgia, and the United States, the medical practice techniques have been developed in a better way in clinics, which have improved the success and safety of the targeted parents and the surrogate.

## Discussion

Surrogacy across borders is a dynamic intersection of law uncertainties, global inequality, and medical development. On the one hand, it brings hope to people and couples who cannot have children naturally, but on the other hand, it also causes a number of ethical and human rights issues. Lack of a unified international law system is still throwing up issues of citizenship, parental recognition, and safeguarding of the surrogate mother. Economic inequalities make the situation worse, since women in third-world countries are likely to undergo surrogacy due to financial motives, and sometimes, it is done at the expense of their freedom and health. Nevertheless, through adequate regulation and international collaboration, cross-border surrogacies may become a more ethical and open procedure.

All the stakeholders can be safeguarded by creating standard international laws, informed consent, and fair compensation. Finally, reproductive freedom versus human rights principles should be balanced to ensure that cross-border surrogacy is transformed into a fair and humane world reproductive practice.

## Conclusion

Cross-border surrogacy is a tricky and dynamic international phenomenon that cuts across the legal, ethical, and human rights aspects. Although it provides a route towards parenthood to most people, the absence of international regulations has continued to pose serious challenges regarding exploitation, citizenship as well and parental recognition. It takes international collaboration and human rights laws to ensure that surrogate mothers, the intended parents, and children are treated fairly and with protection. A clear, honest, and legally unified set of standards will help to turn cross-border surrogacy into a normal practice and make it a regulated, effective, and nonprofit practice that supports dignity, justice, and equality for all parties involved in the process of reproduction.

## Recommendations

- 1. Award Ethical Surrogacy:** Push towards non-commercial, open ones instead of commercial-based surrogacy.
- 2. Control Agencies and Clinics:** Have a very stringent licensing and control of the fertility clinics to prevent exploitation and malpractices.
- 3. Determine parentage consistently:** Establish workable laws to guarantee instant global parenthood.



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- 4. Establish a Global Law System:** Decision: International law surrogacy laws within an organization, like the Hague conference, to have a harmonized law to prevent any cross-border disputes.
- 5. Encourage Bilateral Agreements:** Countries can form treaties so as to address the issue of surrogacy, such as custody, immigration, and parentage.
- 6. Form Awareness and Education:** Educate the people on the principles of surrogacy, rights, and responsibility to reduce the stigma and enable people to be fully informed members.
- 7. Guarantee Child Citizenship:** Find international mechanisms to ensure that children born due to surrogacy are not stateless.
- 8. Insure Informed Consent:** Surrogate mothers should be made aware of all the medical, legal, and emotional implications of any agreement that they may enter into.
- 9. Legal Aid and Counseling:** Legal and psychological assistance of both the intended parents and the surrogate during the process.
- 10. Protect Surrogacy Rights:** proposal of a law that will guarantee fair payment, health services, and post-partum care to the surrogate mothers.

## Research Limitations

There are several limitations to this study on transnational surrogacy that affect the degree of applicability and scope of the results. Firstly, the formulation of a unified international dataset is an obstacle that impedes the determination of the true extent of transnational surrogacy activities and their legal implications. The issue is delicate and provocative, so not all countries have official records or statistics. Second, the rapid change of the legislations and policies across various jurisdictions render the generalizability of the study to the long term, as the legal amendment can rapidly alter the conditions in surrogacy. Third, the ethical and cultural differences between different societies make the perceptions of surrogacy different, and it is hard to arrive at universally accepted conclusions. Besides, a significant role of secondary data sources (academic literature and reports) in the study is a possible bias or lack of first-hand experience of surrogate mothers and prospective parents. Such shortcomings suggest that more empirical, cross-cultural, and policy studies should be done in the future.

## Research Implications

- 1. Awareness and Education:** Would facilitate educational activities concerning the cross-border surrogacy arrangement that would educate all the stakeholders that will be including this case surrogates, the intended parents, and the policymakers, about their rights and responsibilities in the surrogacy arrangement.
- 2. Enhancement of Legal Practice:** Lawyers may apply these insights to approach the cross-border cases that involve and lobby for the inter-jurisdictional parental recognition of them in a uniform manner.
- 3. Human Rights Protection:** Findings demonstrate the integration of a rights approach and the safeguarding of dignity, autonomy, and well-being by both surrogate mothers and the facilitation of the best interests of children.



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**4. International Legal Harmonization:** The analysis indicates that the rest of the world ought to possess a single platform for civilizing the differences in the surrogacy statutes, particularly on parentage, citizenship, and execution of contracts.

**5. Interdisciplinary Collaboration:** The research paper highlights the importance of collaboration among governments, law experts, healthcare professionals, and non-governmental bodies in order to strengthen control strategies.

**6. Policy Development:** The policymakers can use this research to develop an ethical and open surrogacy policy that will assist in preventing exploitation and trigger equitable compensation.

## Future Research Directions

**1. Comparison with the Law:** Future studies should aim to determine the difference in the laws governing surrogacy in various jurisdictions to determine the best approaches in the establishment of an international law.

**2. Child Welfare Studies:** The future of this area of research would be investigating the psychological and legal outcomes of children born in a cross-border surrogacy in the long run.

**3. Ethical and Cultural Perspectives:** The works on the influence of cultural, religious, and moral beliefs on shaping the attitude to surrogacy might be used to enhance the context.

**4. Effectiveness Assessment of Policies:** In order to ensure that the national and international regulations are responsible, transparent, and protect human rights regarding global reproductive tourism, the researchers are expected to analyze how the existing national and international rules perform practically.

**5. Empirical Research on Surrogates' Experience:** More qualitative and quantitative research on the effects of surrogacy on women is still necessary, particularly in developing countries.

**6. Impact of New Technological Development:** The impact of new reproductive technologies on surrogacy practice in the world should be assessed.

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